

REMARKS

I. General

Claims 1-38 were pending in the present application. The present Office Action (mail October 16, 2008) raises the following issues:

- The drawings are objected to for an asserted failure to mention reference characters 128 and 144 in the specification;
- Claims 13, 19, 32, and 38 are rejected under 35 U.S.C. §112, second paragraph; and
- Claims 1-38 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,076,436 to Ross et al. (hereinafter "*Ross*") in view of U.S. Patent Application Publication No. 2003/0097573 to Wheeler et al. (hereinafter "*Wheeler*").

Applicant respectfully traverses the outstanding rejections raised in the current Office Action, and requests reconsideration and withdrawal thereof in light of the amendments and remarks presented herein.

II. Amendments

In the Specification

Paragraph 0019 is amended to correct a typographical error by replacing "54" with "56" to properly refer to the reference character associated with the key processing module in FIGURE 2.

Paragraph 0022 is amended to add "such as cardiology data 128 in the illustrated example" in order to ensure that the reference character 128 shown in FIGURE 4 is mentioned. This amendment is believed to overcome the objection raised in the present Office Action

concerning the failure of the specification to mention the reference character 128. No new matter is added by this addition to the specification, as it is clearly supported by FIGURE 4.

Paragraph 0035 is amended to more clearly refer to the operational block 144 of FIGURE 5. For instance, a sentence in paragraph 0035 is amended to include “(as may be determined in operational block 144 of FIGURE 5)” (with newly-added language shown underlined). This amendment is believed to overcome the objection raised in the present Office Action concerning the failure of the specification to mention the reference character 144. No new matter is added by this addition to the specification, as it is clearly supported by FIGURE 5, as well as the amended sentence’s original reference to “144”.

Paragraph 0037 is amended to correct a typographical error by replacing “the” with “this”.

In the Claims

1, 2, 4, 7, 8, 13, 14, 17, 19, 20, 26, 27, 32, 33, 36, and 38 are amended, claims 3, 22, and 23 are canceled without prejudice, and new claims 39-41 are added.

Claim 1 is amended to recite “a computer-based medical record” instead of “a computer-based data record”. This amendment clarifies that the data record is a medical record, as originally recited in dependent claim 3. As such, dependent claim 3 is canceled without prejudice.

Claim 1 is further amended to recite “automatically populating” which comprises “receiving, by a computer-based application ..., a schedule for contacting said data source...; triggering, by said computer-based application, contacting said data source ...; and receiving, by said computer-based application, the desired field data from the data source.” No new matter is added by the amendments to claim 1, *see e.g.*, paragraphs 0032-0036 of the specification.

Claim 2 is amended for consistency with claim 1. Claim 4 is amended to depend from claim 1 instead of depending from now-canceled claim 3.

Claims 7, 8, 17, 26, 27, and 36 are each amended for grammatical clarity, by adding “; and” between two limitations recited therein. These are not intended as narrowing amendments.

Claims 13, 19, 32, and 38 are each amended to clarify that the recited numeric range-based variable is a variable “that can accept any numeric value within a range of valid numeric values.” These amendments are believed to overcome the rejections raised for these claims under 35 U.S.C. §112, second paragraph.

Claim 14 is amended to recite “automatically populating” that comprises “receiving, by a computer-based application ..., a schedule for contacting said patient” and to clarify that the contacting is triggered by the computer-based application and the receiving and updating are performed by the computer-based application. No new matter is added by the amendments to claim 14, *see e.g.*, paragraphs 0032-0036 of the specification.

Claim 20 is amended to recite “a computer-based medical record” instead of “a computer-based data record”. Claim 20 further recites that “the medical record defines at least a portion of the medical history of a patient”. The amendment clarifies that the data record is a medical record, as originally recited in dependent claims 22-23. As such, dependent claims 22-23 are canceled without prejudice.

Claim 20 is further amended to recite “schedule one or more times for contacting a data source to prompt said data source for the desired field data for said at least one data field” and to recite that the “contact” is “in accordance with the schedule”. No new matter is added by the amendments to claim 20, *see e.g.*, paragraphs 0032-0036 of the specification.

Claim 33 is amended to recite that the telephonically contact of the patient is “in accordance with a defined contact schedule” and is performed autonomously “for requesting the desired field data from the patient”. Thus, this amendment clarifies that the contact is performance in accordance with the defined contact schedule without requiring performance of the contact manually by a user (i.e., but is instead performed autonomously). No new matter is added by the amendments to claim 33, *see e.g.*, paragraphs 0032-0036 of the specification.

III. Drawing Objections

In view of the above amendments to the specification, Applicant respectfully submits that the drawing objections should be withdrawn.

IV. Rejections Under 35 U.S.C. §112, Second Paragraph

Applicant respectfully submits that the rejection of claims 13, 19, 32, and 38 under 35 U.S.C. §112, second paragraph should be withdrawn in view of the above-mentioned amendments. For instance, Applicant respectfully submits that the clarifying amendment to these claims clearly specifies that the recited numeric range-based variable is a variable “that can accept any numeric value within a range of valid numeric values.” Thus, without conceding that the original language of these claims was not in compliance with 35 U.S.C. §112, second paragraph, Applicant respectfully submits that the clarifying amendment ensures that the language is sufficiently definite as to comply with 35 U.S.C. §112, second paragraph.

V. Rejections Under 35 U.S.C. §103

Claims 1-38 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Ross* in view of *Wheeler*. Applicant respectfully traverses these rejections for the reasons discussed hereafter.

The test for non-obvious subject matter is whether the differences between the subject matter and the prior art are such that the claimed subject matter as a whole would have been obvious to a person having ordinary skill in the art to which the subject matter pertains. The United States Supreme Court in *Graham v. John Deere and Co.*, 383 U.S. 1 (1966) set forth the factual inquiries which must be considered in applying the statutory test: (1) determining of the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; and (3) resolving the level of ordinary skill in the pertinent art. As discussed further hereafter, Applicant respectfully asserts that the claims include non-obvious differences over the cited art.

As discussed further below, the rejections should be overturned because when considering the scope and content of the applied combination of the *Ross* and *Wheeler* references there are significant differences between the combination and claims 1-38. Thus, considering the lack of any disclosure or suggestion in the applied combination of all elements of claims 1-38, one of ordinary skill in the art would not find these claims obvious under 35 U.S.C. §103, and therefore the rejections should be withdrawn.

Independent claim 1, as amended herein, recites:

A data entry method comprising:
in a computer-based medical record including a plurality of data fields,
defining one or more data fields for which desired field data is to be acquired; and
automatically populating at least one of the one or more data fields with
desired field data from a data source, said automatically populating comprising:
 receiving, by a computer-based application that is stored to a
computer-readable medium and executing on a processor-based computer, a
schedule for contacting said data source to prompt said data source for the desired
field data for said at least one data field;
 triggering, by said computer-based application, contacting said
data source in possession of the desired field data in accordance with said
schedule; and
 receiving, by said computer-based application, the desired field
data from the data source. (Emphasis added).

The applied combination of *Ross* and *Wheeler* fails to teach or suggest at least the above-emphasized limitations of claim 1. For instance, the applied combination fails to teach or suggest automatically populating a data field of a medical record by receiving, by a computer-based application, a schedule for contacting a data source and triggering, by the computer-based application, contacting of the data source in accordance with the schedule.

For instance, *Ross* appears to permit manual entry of data into medical records, and does not appear to teach or suggest any technique for automatically populating at least one data field of a medical record by contacting a data source in accordance with a received schedule, as recited by claim 1.

Further, *Wheeler* is directed generally to communicating electronically regarding accounts, and addresses various uses of public and private keys, etc. for achieving secured communication. *Wheeler* does not appear to address any technique for updating medical records whatsoever, and, like *Ross*, does not appear to teach or suggest any technique for automatically populating at least one data field of a medical record by contacting a data source in accordance with a received schedule, as recited by claim 1.

In view of the above, the applied combination of *Ross* and *Wheeler* fails to teach or suggest all elements of claim 1, and therefore the rejection of claim 1 should be withdrawn.

Independent claims 14, 20, and 33 are also believed to be patentable over the applied combination of *Ross* and *Wheeler* for reasons similar to those discussed above with claim 1. Therefore, Applicant respectfully requests that these rejections also be withdrawn.

Each of dependent claims 2, 4-13, 15-19, 21, 24-32, and 34-38 depends either directly or indirectly from one of independent claims 1, 14, 20 and 33, and thus each inherits all limitations of the respective independent claim from which it depends. It is respectfully submitted that dependent claims 2, 4-13, 15-19, 21, 24-32, and 34-38 are allowable not only because of their dependency from their respective independent claim for the reasons discussed above, but also in view of their novel claim features (which both narrow the scope of the particular claims and compels a broader interpretation of their respective independent claim).

VI. New Claims

Each of newly-added claims 39-41 depends either directly or indirectly from one of independent claims 1, 14, and 33, and thus each inherits all limitations of the respective independent claim from which it depends. It is respectfully submitted that newly-added dependent claims 39-41 are allowable not only because of their dependency from their respective independent claim for the reasons discussed above, but also in view of their novel claim features (which both narrow the scope of the particular claims and compels a broader interpretation of their respective independent claim).

VII. Conclusion

In view of the above, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-3948, under Order No. 66729/P034US/10614706 from which the undersigned is authorized to draw.

Dated: December 29, 2008

Respectfully submitted,

By 
Jody C. Bishop
Registration No.: 44,034
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-8007
(214) 855-8200 (Fax)
Attorney for Applicant